

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
 725 FRONT STREET, SUITE 300  
 SANTA CRUZ, CA 95060  
 (831) 427-4863



# Th7b

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 Staff: M. Watson  
 Staff report: 03/25/04  
 Hearing date: 04/15/04

## APPEAL STAFF REPORT

### SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

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**Appeal number** ..... **A-3-MRB-03-081, Reddell**

**Applicants** ..... Dan Reddell

**Appellants** ..... George Contento

**Local government** ..... City of Morro Bay

**Local decision** ..... On May 19, 2003, the Planning Commission approved with conditions an application for a lot line adjustment, conditional use permit, and coastal development permit to construct a three and four story mixed use building along the bluffs at 215 Harbor Street. The Planning Commission's decision was appealed on July 3, 2003 and subsequently upheld by the City Council on July 28, 2003.

**Project location** ..... 215 Harbor Street, Morro Bay, San Luis Obispo County (APN: 066-291-013). See Exhibit 1.

**Project description** ..... As approved by the City of Morro Bay, the project involves adjusting the lot line of six existing parcels totaling 17,182 square feet and construction of a three and four story mixed use building on the reconfigured lots, resulting in six new visitor-serving commercial uses on the ground floor totaling 5,133 square feet and six single-family residences with garages totaling 17,549 square feet on the upper floors for a total of 22,682 square feet.

**File documents** ..... City of Morro Bay Permit Numbers TTM 02-02, CUP 08-02, and CDP 35-02R; January 26, 2003 Initial Study and Draft Mitigated Negative Declaration; and the City of Morro Bay certified Local Coastal Program.

**Staff recommendation** . **Substantial Issue Exists; Approve w/ Conditions**

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**California Coastal Commission**  
**April 15, 2004 Meeting in Santa Barbara**

Staff: M. Watson Approved by:

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**Summary of staff recommendation:** On May 19, 2003 the City of Morro Bay approved a Coastal Development Permit authorizing the construction of a three and four story mixed use building at 215 Harbor Street overlooking the Embarcadero in Morro Bay. On July 28, 2003, the City Council denied an appeal of the project finding it consistent with the certified LCP standards. On August 11, 2003, George Contento appealed the City approval on the basis that the project did not conform to the underlying commercial visitor serving zoning standards, and other LCP policies regarding public access, blufftop development, and visual impacts.

The underlying zoning is visitor-serving commercial (C-VS) but the site is located within the Planned Development (PD) and Special Design Criteria (S.4) overlay zones. As stated in the certified LCP, the purpose of C-VS zone is to provide a district for commercial uses intended to primarily serve the needs of tourists and other visitors to the city. The C-VS zoning does provide for residential uses, but only when secondary to principally permitted commercial uses.

The project site encompasses six contiguous lots on a sloping coastal bluff above Morro Bay's scenic Embarcadero. The proposed development is subject to the City's bluff development, planned development and special design criteria standards because of its location and because it is a 17,182 square foot property in single ownership. As approved, the project will adjust lot lines to create six small lots that range from 2,200 square feet to 3,667 square feet. The applicant proposes to construct six commercial retail shops ranging from 614 square feet up to 1,522 square feet on the ground floor level with six single family residences ranging from 1,651 square feet to 3,102 square feet on the second, third and fourth floors. In addition, each residential unit is provided with a private garage ranging from 485 to 550 square feet. The six residential units also include 2,255 square feet of porches, balconies, and decks. The total amount of new commercial floor area is 5,133 square feet; the total amount of residential floor area (with garage, without balconies and decks) is 17,552 square feet. The ratio of residential to visitor-serving commercial floor space is greater than 3:1.

Building height along the primary elevations (i.e., Harbor, Market, and Front Streets) averages between 32– 42 feet which exceeds the 30' height standard for development in the C-VS zone. In approving the project, the City cited the exemption allowance for projects located within a planned development (PD) overlay, which allows for modification of or exemption from the development standards of the primary zone, which would otherwise apply, if it would result in better design or other public benefit. The applicant provided as an example of the public benefits, under-grounding of utilities, provision of ADA accessible public sidewalks and mini-plazas, and the chance to "master plan" development on all six lots at one time.

Each of the approved six residential units will have a two-car garage. In addition, one handicapped-accessible space and two guest spaces are provided for a total of 15 parking spaces to serve the residential portion of the project. City standards further require one parking space per every 300 square feet of commercial floor area space (e.g.,  $5,133 / 300 = 17.11$ ). The applicant has suggested, however, that a parking in-lieu fee will be paid to the City for acquisition and provision of the balance of required



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parking spaces, although this was not required by the City as a condition of approval.

The project approved by the City raises a substantial issue regarding conformance to the City of Morro Bay certified Local Coastal Program (LCP) public viewshed and neighborhood compatibility, primary zoning, parking, and blufftop development policies. For example, the City's approval exceeds maximum allowable heights and failed to adequately evaluate the impacts on public views to Morro Bay and Morro Rock. The approval of the mixed-use building does not provide an appropriate balance of commercial (primary) to residential (secondary) uses and failed to adequately consider impacts on neighborhood compatibility or provide adequate mitigation for required parking. In general, the certified LCP requires development to be sited to protect views to and along the ocean and scenic coastal areas, and be visually compatible with the character of the surrounding area. The size and scale of the approved development is much larger than all existing development adjacent to the project site and along the Embarcadero and is generally inconsistent with the small town fishing village character of Morro Bay. Furthermore, excessive massing will obstruct significant coastal views of Morro Bay and Morro Rock, the landmark of the community.

As a result, staff recommends that the Commission find that the appeal raises a **substantial issue** regarding conformance to the certified LCP.

In meetings with staff, the applicant has proposed modest revisions to the approved project that would remove a fourth floor element and increase the Harbor Street setbacks of the upper floors to reduce visual impacts. Notwithstanding the proposed design improvements, additional measures are needed to ensure the project is consistent with the certified LCP. Staff therefore recommends that the Commission **approve a project with conditions** designed to resolve issues with visual resources, neighborhood compatibility, parking, consistency with underlying zoning. Specifically, the recommended conditions:

- Achieve consistency with the LCP visual resource policies by reducing the overall height of the proposed development and increasing views towards Morro Bay and Morro Rock;
- Bring the project into conformance with the LCP zoning standards by facilitating greater balance between the residential and visitor-serving commercial uses on the site;
- Require an appropriate parking in-lieu fee to be paid to the City of Morro Bay for the future purchase of property and provision of public parking in the Embarcadero;
- Incorporate the conditions and mitigation measures approved by the City of Morro Bay in order to achieve compliance with the local conditions of approval.



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## Exhibits

- Exhibit 1: Project Location Map
- Exhibit 2: City of Morro Bay Staff Report, Findings and Conditions
- Exhibit 3: Appeal of George Contento
- Exhibit 4: Current Project Plans, Elevations, Lot Configuration
- Exhibit 5: Photos of Surrounding Area
- Exhibit 6: Special Condition 1 Illustration
- Exhibit 7: Bluff Alignment: Topography Map

## 1. Local Government Action

On May 19, 2003, the City of Morro Bay Planning Commission approved and issued a coastal development permit for a mixed-use building at 215 Harbor Street overlooking the Embarcadero and waterfront. The City relied upon planned development (PD) overlay exemptions to overall height and side yard setbacks to make a finding of project consistency with the certified LCP. In its findings, the City concluded that a greater than normal public benefit would be achieved by such deviations from the standards. Some examples of those benefits mentioned include neighborhood revitalization, a visual



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connection between downtown and the waterfront, construction of a block-long sidewalk with curb and gutter, and architectural distinctiveness. The project did not include enough requisite parking onsite and as a consequence should rely upon payment of an in-lieu fee to adequately mitigate for the loss of parking. Though there is a brief analysis of parking in the Planning Commission's January 18, 2003 report, no findings or conditions requiring an in-lieu fee were attached to the City's final report approving the project. See Exhibit 2.

An appeal of the Planning Commission decision was filed on July 3, 2003 by a local resident, George Contento, who argued that the project was inconsistent with the City's certified LCP policies regarding the underlying zoning, visual compatibility, public parking, and bluff top standards. The appellant's contentions were denied by the City Council on July 28, 2003 upholding the earlier Planning Commission decision.

## 2. Standard of Review for Appeals

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because the development is within 300 feet of the mean high tide line.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located within 300 feet of the mean high tide and thus, this additional finding is not required in the de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicants, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.



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### 3. Summary of Appellant's Contentions

In general, the Appellant asserts that the project is inconsistent with the base zoning of commercial visitor serving in that roughly 77% of the floor area is dedicated to residential use. The appellant further contends that a residential use is inconsistent with Coastal Act policies, which place a priority on visitor serving uses in areas where it is suitable. Another claim is that the project does not provide adequate parking and that the City's in-lieu parking fee is inadequate to provide enough funds to purchase parking spaces in the Embarcadero area. In addition, the appellant contends the project exceeds height limits specified in the bluff development standards and is inconsistent with the visual policies of the LCP. Specifically, the appellant contends that the City-approved project is not consistent with the certified Land Use Plan (LUP) Policies 1.07A, 1.25, 2.02, 2.08, 12.01, 12.02, 12.06 and Commercial Visitor Serving zoning standards 17.24.120, and bluff development standards 17.45 because:

- The C-VS district is intended to primarily serve the needs of tourists and other visitors to the City. The Harborview project contains six residential units over commercial space with a total floor area of roughly 74%. Commercial space is 26%.
- Harborview is short 34 parking spaces. Morro Bay's parking in-lieu fee is inadequate to provide enough funds to purchase parking spaces in the Embarcadero.
- The proposed project is inconsistent with bluff top development standards, which limit building height to 14 feet.
- Harborview will appear to be five stories tall. Currently, no existing development on the bluffs or the Embarcadero exceeds 2.5 stories in height. The project is inconsistent with the existing small town character and will block public views from streets.

Please refer to Exhibit 3 for the full text of the appeal.

### 4. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

**Motion.** I move that the Commission determine that Appeal Number A-3-MRB-03-081 raises no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

**Staff Recommendation of Substantial Issue.** Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.



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**Resolution To Find Substantial Issue.** The Commission hereby finds that Appeal Number A-3-MRB-03-081 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

### Recommended Findings and Declarations on Substantial Issue

These findings incorporate by reference, the more detailed discussion of the issues found in the De Novo portion of this report.

### 5. Project Location, Description, and Background

The project approved by the City is located in the Bayfront planning area on the bluffs of the Embarcadero at 215 Harbor Street in the City of Morro Bay. The Embarcadero is defined as the area between Beach Street on the north, Main Street on the east, Olive Street on the south, and the waterfront to the west. The LUP notes that the Embarcadero area provides visitors and residents direct views to the bay, Morro Rock and a working harbor. See Exhibit 1.

The project site comprises an entire city block and is located in the heart of the waterfront, the most visited part of the City. The entire area is zoned commercial visitor serving (C-VS) and there are numerous restaurants, hotels, shops, and boutiques in this area. The site of the proposed development also lies within a planned development (PD) and special design criteria (S.4) overlay zone. The purpose of the PD overlay is to provide for detailed and substantial analysis of development on parcels which because of location, size, or public ownership, warrant special review. This overlay also is intended to allow for modification of or exemption from the development standards of the primary zone which would otherwise apply if such action would result in a better design or other public benefit. The final zoning consideration is the special design consideration overlay which requires special design review to maintain and enhance the character and visual quality of areas so designated.

The site of the proposed development rises up to approximately 40 feet above sea level, such that there are views down Harbor Street towards Morro Rock, Morro Bay, and the sand spit. The City's LUP describes Morro Rock as "the landmark of the community" and "the most significant visual feature of the area." Morro Bay and the Embarcadero in particular is *the* major tourist attraction of the community and a prime coastal visitor-serving destination with an estimated 1.5 million visitors annually.

As noted above, the approved project comprises six attached mixed use buildings, three and four stories in height, on six legal lots of record. The approval includes 6 ground floor commercial visitor serving establishments, roughly 5,135 square feet in total and 6 residential units roughly 14,405 square feet in total on the second, third, and fourth floors. The approval also includes 6 two-car garages, one for each residential unit and an additional three spaces for ADA accessible parking and two guests. The total residentially related garage space is 3,150 square feet. Together the residential component of the project



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(residential units plus garage) comprises roughly 77% of the total enclosed floor area space, while the total commercial retail space consists of approximately 23% of the total enclosed floor area. Add to that another 2,250 square feet of porches, balconies, patios, and walks and the total gross structural coverage of the residential units equates to 19,800 square feet or roughly 79% of the building. The project will also include such customary improvements as sidewalks, curbs and gutters, ADA accessible ramps and landings, landscaping, and increasingly more common improvements such as underground utilities lines.

The blufftop site at 215 Harbor Street lies north of Harbor Street, east of Front Street, and west of Market Street. The blufftop at this location is at an elevation of approximately 40 feet above mean sea level and has the remnants of an old hotel and residential buildings on it. Constructed sometime prior to 1958, the Harbor View Motor Lodge remained on the site until March 1995 when a large bluff retaining wall along Front Street collapsed during a rainstorm. Upon the collapse of the retaining wall that supported the site, the motor lodge buildings were condemned and demolished. Today the bluff parcel slopes up from approximately 14 feet above mean sea level at Front Street to roughly 40 feet mean sea level at Market Street. In determining average grade from which to measure building height, the certified LCP establishes that building height calculations be measured from topographic conditions that were in existence on January 1, 1986. At that time, the property was developed with a large retaining wall (+/- 25 feet high) along Front Street. According to LCP policy 17.12.310, what is allowable in terms of establishing average grade and thus maximum building heights today must be measured from pre-existing grades, even though the collapse of the bluff retaining wall in 1995 has altered the topography significantly.

Also of note, the certified LCP establishes that new development located within 50 feet of the bluff edge shall not exceed a height limit of 14 feet, with the exception of steeply pitched roofs and other appurtenances (i.e., chimney stacks) which may rise to 17 feet. The City's staff report findings declare that the natural bluff feature was lost years ago during construction of the Harbor View Motor Lodge and the large retaining wall along Front Street. It appears, however, from comparing old State Tidelands Maps and USGS photo-rectified topographical maps with recent aerial photos of the site, that the existing bluff edge position follows the same or similar alignment as the historical (pre-development) bluff edge. The certified LCP provides policies for delineating the bluff top edge along with standards for establishing bluff setbacks, height requirements, and development controls, though the City's staff report findings and approval did not reference them.

## 6. Substantial Issue Findings

**1. Visitor Serving Priorities.** The appellant contends the project is inconsistent with the base visitor serving commercial (C-VS) zoning of the parcel. Appellant indicates that the primary purpose is for visitor-serving type uses such as restaurants, hotels, gift shops, etc., and that the amount of building space dedicated towards residential use (i.e., 74%) is inappropriate under this zoning. Table 17.24.120(I) of the LCP specifically states that a single apartment unit or security quarters may be allowed only when secondary to permitted commercial uses and located on the rear one-half of a lot or upper story.



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The project site is also located in a planned development and special design criteria overlay zone. Section 17.40.030 (PD) provides for detailed and substantial analysis of development on parcels, which because of location, size or public ownership warrant special review. This section is also intended to allow modification or exemption from the development standards of the primary zone if such an action would result in a better design or greater than normal public benefit achieved by such modifications. Section 17.40.050G (Special Design Criteria S.4) requires the submittal of viewshed plans for review and approval to protect and enhance the character and visual qualities of the area.

As noted in the appeal, the approved project is weighted in favor of residential development over the visitor-serving commercial aspects of the project by 3:1 and appears to be inconsistent with the intent of the visitor serving commercial district. The approval allows an exemption from the underlying zoning height standard, and fails to consider other complimentary standards (bluff development, visual resource) that ultimately results in a degradation of public views of Morro Bay and Morro Rock and is not subordinate to the character and form of the coastal bluff. The city's approval did not demonstrate greater than normal public benefits or adequately evaluate the project's impacts on significant coastal views as required by 17.40.050G. The approval may set a precedent for other mixed-use developments contemplated in this area and the potential for adverse impacts to coastal resources, particularly visual resources and neighborhood compatibility, will be exacerbated if development in the surrounding area seeks similar exemptions to the baseline and overlay standards established by the LCP. Thus, the appeal raises a substantial issue regarding the project's consistency with the base zoning.

**2. Visual Impacts.** Similarly, appeal contentions regarding the visual impacts of the increased development intensity raise a substantial issue regarding the project's consistency with LCP visual resource protection standards, such as Section 17.48.190 and Policies 12.01, 12.02, and 12.06 requiring that the scenic and visual qualities of coastal areas be protected and enhanced. Appellant contends that the large-scale development is not consistent with the City's small town atmosphere and will adversely impact public views, as well as set a bad precedent for Morro Bay and the other central coast towns. The exemptions to LCP height and visitor-serving priority standards approved by the City have the potential to conflict with LCP visual resource protection requirements by blocking coastal views, altering coastal bluffs, and introducing a design and intensity of use that is not compatible with surrounding development. Because these impacts are not addressed by the City's approval, the appeal raises a substantial issue.

**3. Parking.** The appeal contentions raised surrounding parking impacts associated with the project raise a substantial issued regarding the project's consistency with LCP parking standards, 1.07A and 2.08. The appellant contends that the approved project will harm public access to a prime visitor serving area by not providing enough public parking on-site and notes that the current level of public parking along the City's waterfront is inadequate. The appellant further contends that the City's in-lieu parking fee system is inadequate to fund acquisition of available lands and provide parking especially in the Embarcadero area as required by LCP policy. Though the City approval adequately conformed to the parking requirements for that portion of the development associated with the residential (secondary) use, it did not comply with the parking requirement for public parking associated with development of a visitor serving commercial (primary) use and was not conditioned to include a fee in-lieu of the required



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parking. Therefore, the appeal raises a substantial issue regarding the project's conformance to LCP parking requirements.

**4. Bluff Top Development.** As with the appeal contentions above, the City approval raises a substantial issue with respect to the project's conformance with the certified LCP bluff development standards such as 17.45.010 and 17.45.040. In this instance, the appellant contends that the approved project is inconsistent with blufftop development standards, which limits new development to 14 feet in height above the existing bluff. The Harborview project is two and sometimes three times that height and does not step down the bluff face as required. As with section 7.1 above, the City approval relied upon the planned development (PD) designation to grant an exemption from the bluff development standards protecting the unique geographic features of the bluff. The approval fails to consider other complimentary standards designed to preserve and enhance public views to and along the bay and ensure that bluff development is subordinate to the character and form of the coastal bluff area. Thus, the appeal raises a substantial issue regarding the project's consistency with the LCP's bluff development standards.

**5. Substantial Issue Conclusion.** The appeal raises a number of issues associated with the project's consistency with the City's certified LCP. The proposed mixed-use project is too large, too massive, and skewed too far towards residential development to be consistent with the underlying zoning standards, the bluff development standards, and the general character of the Embarcadero. The approval will block views to the City's most prominent visual resource –Morro Rock and does not include an adequate evaluation of potential viewshed impacts. The City's approval does not include the required amount of parking for the commercial portion of the development and does not provide any mitigation for the deficiency. The City-approved mixed-use building is not compatible with the character of the bluff setting or surrounding development and will become the dominant feature of the site.

**Therefore, a substantial issue is raised regarding the consistency of the City's approval with the certified LCP policies and standards.**

## 8. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **approve** the Reddell coastal development permit with conditions.

**MOTION:** *I move that the Commission approve Coastal Development Permit No. A-3-MRB-03-081 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:** Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:** The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified City of



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Pismo Beach Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## 9. Conditions of Approval

### A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### B. Special Conditions

1. **Revised Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the permittee shall submit to the Executive Director for review and approval revised project plans showing a project reduced in size but similar in design to the project approved by the City and clearly showing square footage, point of measurement for building height and finished floor heights, with heights labeled and dimensioned on the plan. The final site plan, floor plans, and elevations shall be in substantial conformance with the revised project concept plans drafted by Mark Allen and dated as received by the Commission on October 23, 2003 to the following criteria:
  - a) **Building Height.** Overall building height shall be limited to 14' as measured from average site grade of 38.5 feet. In addition to the height limitation, the Market Street



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facade shall not present more than two levels (floors) on the east elevation. The Front Street facade shall present no more than three levels (floors) at the west elevation. Plate height at the Front Street elevation shall not exceed 31 feet from the identified finished floor elevation. Magilside Drive facade shall not exceed two levels (floors). The Harbor Street facade shall not exceed three levels (floors). Chimneys, vents, and other appertenances shall be limited to three feet above the roofline. Building facades shall be broken up and setback such that no unbroken portion of the building fronting a public street shall exceed 20 feet in height above finished grade. Please see Exhibit 6 for a graphic illustration of this condition.

- b) Mixed Use Development. The revised building plans shall demonstrate a more balanced weighting of commercial and residential uses and in no instance shall the proportion of residential use (i.e., floor area, garage, other enclosures, etc.) exceed 65% of the total uses on the site.
2. **Parking In-Lieu Fee. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the Permittee shall submit to the Executive Director for review and approval, evidence that the entire parking requirement has been satisfied for the residential and commercial uses or evidence that a parking in-lieu fee has been paid to the City of Morro Bay equal to a) the current fair market value of purchasing land in the vicinity of the project (i.e., Embarcadero) *and* b) construction of the required number of off-site parking spaces needed to serve the development.
  3. **Compliance with Local Conditions of Approval.** With the exception of City Conditions 1 and 3, all 35 conditions of the City of Morro Bay Coastal Development Permit # 35-02R become conditions of this permit. (See Exhibit 2 of this report for a copy of the local conditions of approval). Because the City imposed these conditions under legal authority that included but was not limited to the Coastal Act, they remain binding on the applicant as City requirements notwithstanding the Commission's action on this appeal. Accordingly, **PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall provide evidence to the Executive Director that those conditions requiring action prior to the commencement of any work have been signed-off by the appropriate City official. Evidence of subsequent condition compliance must also be submitted to the Executive Director at the required stage. In the event that City officials do not exercise such authority, permittee shall submit condition compliance materials to the Executive Director for review and approval.

## 10. De Novo Coastal Permit Findings

By finding a substantial issue in terms of the project's conformance with the certified LCP, the Commission takes jurisdiction over the CDP for the proposed project. The standard of review for this



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CDP determination is the City LCP and the Coastal Act access and recreation policies. The substantial issue findings above, including all citations and analysis, are incorporated directly herein.

## A. Visitor Serving Priorities

The City's certified zoning standards detail specific uses and guidelines for development within visitor serving commercial (C-VS), Planned Development (PD), and Special Design Criteria (S.4) overlay zones. Those policies state:

### 17.24.120 Visitor-serving commercial (C-VS) district.

*Purpose. The purpose of the visitor-serving commercial (C-VS) district is to provide a district for commercial uses intended primarily to serve the needs of tourists and other visitors to the city and not to include commercial uses of a more general nature which are oriented towards residents. Uses in this tourist-oriented district shall also provide for landscaping and related aesthetic improvements which create and enhance the visual attractiveness of the city.*

#### Table 17.24.120 (I)

*Unless otherwise designated, the following uses, or other uses which are found to be similar and consistent with the general plan and local coastal plan may be allowed with the appropriate permits and licenses:*

*A single apartment unit or security quarters only when secondary to permitted commercial uses and on the rear one-half of a lot or upper story.*

### 17.40.030 Planned development, (PD) overlay zone.

*A. Purpose. The purpose of the planned development (PD) overlay zone, is to provide for detailed and substantial analysis of development on parcels which, because of location, size or public ownership, warrant special review. This overlay zone is also intended to allow for the modification of or exemption from the development standards of the primary zone which would otherwise apply if such action would result in better design or other public benefit.*

*D. General Development Standards. The standards for development within a PD overlay zone shall be those of the base zoning district, provided however, that standards may be modified by the planning commission or city council as they relate to: building heights; yard requirements; and minimum lot area for dwelling units in the density range provided that any specific design criteria of the general plan and coastal land use plan, applicable to the property, is not exceeded. For those areas of the city which are covered by the waterfront master plan, all new development projects requiring discretionary permits (conditional use permits, etc.) shall be consistent with the design guidelines contained in Chapter 5 of the waterfront master plan. Modifications of standards shall only be approved upon a finding that greater than normal public benefits may be achieved by such deviations. Such benefits may include, but are not limited to improved or innovative site and architectural design, greater public or private usable open space and provisions of housing for the elderly or low/moderate income families, provision of extraordinary public access, provision for protecting environmentally sensitive habitat (ESH)*



*areas, but in all cases these provisions shall meet the coastal land use policies.*

17.40.050 Special treatment (S) overlay zone.

*G. S.4 Special Design Criteria Overlay Zone. In order to maintain and enhance the character and visual quality of these areas, special design review has been found to be necessary. Applications for development shall include (as appropriate) submittal of architectural, landscaping, lighting, signing and viewshed plans for review and approval.*

## Analysis

The development site is zoned C-VS with a planned development (PD) and special design criteria (S.4) district overlay. The primary purpose of the C-VS zoning as defined in the certified LCP is to provide uses that serve the needs of tourists and other visitors to the City and not to include uses of a more general nature that are oriented towards residents. Mixed-use development such as that proposed here may also be allowed with a conditional use permit. Table 17.24.120 (I) of the certified zoning establishes that a single apartment unit or security quarters may be allowed only when secondary to permitted commercial uses and located on the rear one-half of the lot or upper story.

In this particular case, the approved project adjusts lot lines to create 6 modest building sites (2,200 – 3,665 square feet) with 6 commercial establishments on the ground floor of the building (615 – 1,520 square feet) and 6 single-family residential units on the second, third, and fourth floors (1,650 – 3,650 square feet). The total amount of floor area space dedicated to visitor-serving commercial uses is 5,135 square feet or roughly (23%) of the total enclosed building area. Roughly 14,405 square feet is dedicated to residential living space and another 3,150 square feet for enclosed residential garages. There is also more than 2,250 square feet of residential balconies, porches, walks, and decks proposed. Though there are not any specific size limits for residential units in the C-VS district, the current ratio of residential to commercial use is more than 3:1. Gross structural coverage attributed to the residential use approaches 79%. Table 1 provides a breakdown of the approved development (floor area space) by use.

The applicant maintains that the project's retail space compares favorably with other retail establishments along the Embarcadero and that all the residential uses are located on the upper floors and thus secondary to commercial uses. Applicant exclaims the project adds more than 5,000 square feet of new retail space to the waterfront, a multitude of public benefits, while also providing six single-family residences. Applicant further notes that the project will provide shopping, dining, and other amenities that will enliven the visitor experience and compliment nearby hotels.



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**TABLE 1: FLOOR AREA (SQ. FT.) BY USE**

	<b>LOT SIZE</b>	<b>COMMERCIAL FLOOR AREA</b>	<b>RESIDENTIAL FLOOR AREA</b>	<b>RES + GARAGE</b>	<b>TOTAL</b>
<b>UNIT A</b>	3,667	887	3,102	3,651	4,538
<b>UNIT B</b>	2,902	1,522	2,680	3,220	4,744
<b>UNIT C</b>	2,262	706	1,651	2,191	2,897
<b>UNIT D</b>	2,951	740	2,409	2,949	3,689
<b>UNIT E</b>	2,200	664	2,167	2,659	3,323
<b>UNIT F</b>	3,200	614	2,396	2,879	3,493
<b>TOTAL</b>	<b>17,182</b>	<b>5,133</b>	<b>14,405</b>	<b>17,549</b>	<b>22,684</b>
		<b>23%</b>		<b>77%</b>	

From the data provided in Table 1, the City-approved development is not consistent with the underlying zoning standard identified in Table 17.24.120 (I) that allows a single apartment unit or security quarters only when secondary to permitted commercial uses and [located] on the rear one-half of a lot or upper story. The applicant suggests that establishing secondary uses is as simple as determining that all uses will be located on the second floor. Unfortunately, the applicant fails to observe that the standard has two criteria and clearly states the residential use must be secondary *and* located on the rear one-half of the lot *or* upper story, indicating that secondary implies some additional limitation on residential use. The descriptive terms “single apartment unit” or “security quarter” also imply a small residential unit. Secondary uses as it is interpreted within the context of the entire standard, implies that they are inferior or subordinate to primary uses. Clearly, based on floor area alone, the residential use is not subordinate to the commercial use. Similarly, with respect to height and massing, the residential uses are not subordinate. Even with respect to provision of off-street parking, the residential uses are not subordinate to the visitor-serving commercial aspects of the project.

The City’s findings and approval was based largely on the conclusion that the residential uses were secondary because they could not be accessed from the ground floor along the primary elevations. Though a review of the project plans suggest that at least a portion of one residential unit and the enclosed residential parking garages will be located at grade. Presumably ingress / egress will be accessed from Magilside Drive and Harbor Street (primary) elevations. The LCP standard requires that residential units be located on the rear one-half of the lot *or* on the upper story. In this case, the



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applicant has designed a project that does both.

Finally, the certified zoning allows a single apartment unit or security quarters to be permitted with a conditional use permit. It is, however, a stretch to conclude that the proposed residential units are similar to “single apartment units” or “security quarters.” *Averaging* at just under 2,925 square feet, the residential units with garages are fairly large single-family residences by Morro Bay standards, where the average size home is 1,949 square feet.

The development site is also located in a planned development (PD) district overlay affording it modification or exemption from the development standards of the primary zone if it would result in a better design or other public benefit. Section 17.40.030 D of the zoning provides for modification of building heights, yard requirements, and minimum lot area. Modifications of these standards can only be approved upon a finding that greater than normal public benefits may be achieved by such deviations. Examples of those benefits include: innovative site and architectural design, greater public or private usable open space, provision of housing for low income families and the elderly, provision of extraordinary public access and protection of environmentally sensitive habitat.

The City’s approval includes an exemption from the 30’ height limit for development within the visitor-serving commercial zone. In justifying the need to invoke the PD exemptions, the City found that the project provided an opportunity to master plan six parcels at once and obtain all of the street frontage improvements at the same time. The City also sited the project’s site design and creative architecture, agreement to underground utilities, as well as an opportunity to advance community goals promoting mixed-use development that it believes will draw tourists from the Embarcadero to the downtown area.

The City’s approval does not, however, demonstrate that the exemptions will result in greater than normal public benefits. For example, the identified public benefits include:

1. Improved public access by providing ADA accessible sidewalks and six street-level visitor serving retail shops with terraced mini-plazas.
2. Creation of a welcoming corridor between downtown Morro Bay and the waterfront. Harbor Street provides a direct link to the downtown. The idea is that the six retail shops will create a point of interest that draws persons up the hill and eventually to the downtown area.
3. An enlivened pedestrian experience.
4. Project revitalizes the neighborhood.
5. Establishing a strong visual connection between the downtown and the waterfront. The applicant claims the project will restore and enhance the visual quality in a visually degraded area.
6. Architectural Interest. The three and four story buildings step up the hill proportionate with the hillside corner itself. Scale of the buildings are minimized and made interesting through variations in depth and height, pop-outs, extensive use of windows.



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As noted above, these improvements may, in fact, benefit the public, but they do not appear to constitute greater than normal public benefits and could be expected to be required of any proposal. With respect to creating a welcoming corridor to the downtown, Staff notes that the heart of the downtown is three to four blocks east of the development site with little draw for visiting tourists. The real attraction in Morro Bay is the working harbor of the Embarcadero and the visitor serving restaurants and retail shops along the waterfront. Staff also notes that the project site is zoned for visitor serving commercial and thus, the provision of commercial development, in and of itself, does not represent a greater than normal public benefit. With respect to revitalizing the neighborhood, the proposed building site has been dormant for some time and thus, the City-approved development will help to revitalize the area. However, the proposed project would do more to revive the City's revenue stream if more of the proposed development were devoted more toward visitor serving commercial uses as opposed to residential uses. Further, Staff disagrees with the applicant's characterization of the bluffs. The proposed development site is located at the southern end of an unbroken natural bluff designated as highly scenic in the certified LCP. Construction of the project, as proposed, will obstruct significant coastal views to Morro Rock and Morro Bay and further degrade the visual quality of the bluff site. The proposed architectural design is interesting, though the approved residences are not low cost and the exemptions are not necessary to protect public access or sensitive habitats. The project will provide open space (albeit paved), but the architectural design conflicts with other LCP resource protection requirements by blocking coastal views, and introducing a design and intensity of use that is not compatible with surrounding development or the character of the bluff setting.

Thus, as approved by the City, the proposed development does not conform to the underlying zoning standards of the LCP. In order to bring the project into conformance with the certified LCP the Commission is recommending special conditions that address the overall height of the building and limit the number of vertical stories on the primary elevations to ensure the project is consistent with the standards identified in the underlying visitor serving commercial zoning. The special conditions also require a more even balance between primary and secondary uses while still providing for significant development of a mixed use building. Only as conditioned, can the proposed project be found consistent with sections 17.24.120, 17.40.030, and 17.40.050 of the City's certified LCP.

### B. Community Character

The LCP acknowledges the need of the City to preserve the unique character of its varied neighborhoods and to create a higher quality visual environment within them. The certified land use plan states,

*Among some of the issues that predicate the establishment of policy to preserve neighborhood character are the following:*

- (a) New residences and new residential additions are often out of scale and character with the residences in the vicinity,*



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*(b) the current allowable height and bulk for residential development is not appropriate for some portions of the community. Such buildings would in many cases block important views and conflict with the character of individual neighborhoods.*

The LCP identifies 3 neighborhoods as primary candidates for protection of neighborhood character, including the Embarcadero.

*Development of waterfront areas along the Embarcadero, as well as along the bluffs above the waterfront is an integral part of the views of the bay and Morro Rock and the views from this area should be enhanced.*

The LCP policies applicable to this project require new development to be compatible with character of the surroundings by maintaining size, scale, and height relationships with existing development in the area. Those policies state in part:

### Land Use Plan Policy 12.01

*Permitted development shall be ... visually compatible with the character of surrounding areas.*

### Land Use Plan Policy 12.02

*Permitted development shall be sited and designed to ...be visually compatible with the surrounding area. Specific design criteria shall be established for the following areas:*

#### *a. The Embarcadero*

*The criteria shall include the following specific requirements and shall be applied to proposed projects on a case by case basis during architectural review:*

#### *a. Building height/bulk relationship compatible with existing surrounding uses;*

### Land Use Plan Policy 12.06

*New development in areas designated on Figure 31 as having visual significance shall include as appropriate the following:*

#### *a. Height/bulk relationships compatible with the character of surrounding areas or compatible with neighborhoods or special communities which, because of their unique characteristics, are popular visit destination points for recreation uses.*

### 17.45.010 Bluff Development Standards: Purpose

*Regulations and performance standards are herein specified to regulate development on coastal bluffs for the following purposes:*



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*A. Protect Public Views. To protect public views to and along the ocean and scenic coastal areas, maintain the character of the bluff setting...*

*D. Geographic Features. To maintain the unique geographic features of the bluffs and ensure development is subordinate to the character and form of the coastal bluff areas.*

### 17.45.040 Bluff Development Standards.

*In addition to the primary base zoning district, and suffix zones, combining districts, specific plan requirements, the following standards shall apply within the bluff buffer area for development on coastal bluff properties:*

*C. Permitted Development. Permitted development shall be sited and designed to protect public views to and along the ocean and scenic coastal areas, and shall be subordinate to the character of the setting.*

### 17.48.190 General Regulations

*New development may be permitted only if the siting and design meet the following standards:*

*C. Compatibility: the development is visually compatible with the character of the surrounding area and any design themes adopted for the area by the city.*

*E. Scenic area standards: in highly scenic areas, as depicted in the Morro Bay coastal land use plan/coastal element, the following additional standards shall also apply:*

- 1. Character: the proposed development shall be subordinate in character to its surroundings.*
- 2. Height/bulk: the height/bulk relationships in the development shall be compatible with the surrounding area.*

## Analysis

These LCP policies were adopted to protect the unique character and small town atmosphere of the City of Morro Bay. The town is made special by the style and character of development along the Embarcadero and the City's waterfront. In particular, the surrounding district is primarily characterized by elements of its commercial fishing roots and the visitor-serving shops, restaurants, and hotels that cater to thousands of out-of-town visitors annually. Development in the area adjacent to the project site tends to be a mix of residential and visitor-serving commercial uses, one and two stories in height. Building size and mass is largely defined by the underlying zoning standards, the location of the development (i.e., waterfront, blufftop, etc.), and the City's goals to preserve the character of the Embarcadero.

As noted in the substantial issue findings above and incorporated by reference into this portion of the staff recommendation, development of the bluffs north of the project site is limited to the blufftop



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with the natural landform of the bluff face unaltered. South of the project site, development is generally more intensive and follows the contour of the land stepping down the bluff. The Market Street frontage is characterized by single story development, such that existing views to and along the bay and Morro Rock are maintained. Please see Exhibit 5. At the toe of the bluff (Front Street), buildings often have multiple stories but are limited to less than 30 feet in height. Existing development along Harbor Street is currently limited to two stories or less.

The proposed project is an architecturally thoughtful design incorporating the use of numerous building offsets, appendages, and fenestrations to create patios, balconies, and walkways to break up mass. Unfortunately, the proposed development is still quite large and, in fact, much larger in size, scale, and height than all other existing development along the bluffs. As approved by the City, the commercial/residential mixed-use building is 2-stories in height along Magilside Drive, 3-stories along Market Street, 3 and 4-stories along Harbor Street, and 3-stories in height along Front Street. Overall building height is 24' at the north elevation (Magilside Drive), 34' at the east elevation (Market Street), 42' at the south elevation (Harbor Street) and 36' at the west elevation (Front Street). Structural development covers nearly 60% of the roughly 17,200 square foot site and non-structural impervious surfaces cover the balance of the site. Although the project will be constructed over 6 individual lots, the dwellings share common walls and the building appears to be one large structure –150' long x 82' wide. The height and mass of the approved project exceeds the height/bulk relationships of adjacent development and certainly is not subordinate to the character of the bluff setting at this location. This structure will loom over existing development and become the dominant feature of the site. As a result, the three and four story mixed-use structure is inconsistent with the certified LCP policies protecting the unique character of the Morro Bay's Embarcadero and surroundings.

In order to bring the project into conformance with the certified LUP and Implementing Ordinances, the Commission is recommending special conditions of approval. Design guidelines pertaining to the height of the building and limiting the number of vertical stories along the north and east elevations are intended to ensure that the project reflects the mass and height relationships of adjacent development and protects the character and form of the coastal bluffs. Special Condition 1 places a limit on overall height to 14 feet above the historic average grade of 38.5 feet. The basis for the 14-foot limit originates in the City's bluff top development standards, which require that all development within 50 feet of the bluff edge to be limited to 14 feet. See section E below. This limit is needed to comply with LUP policy 12.02 and general zoning regulations 17.48.190 that requires new development to limit view blockage of the Bay and Morro Rock. Based on the existing site conditions, nearly the entire site lies within 50 feet of the bluff edge. See Exhibit 7.

Additionally, in order to maintain the height/bulk relationship consistent with the existing surrounding uses, special condition 1 places limits on the building facades (i.e., numbers of floors) of the primary elevations (i.e., east, south, and west). Market Street is limited to no more than 2 floor levels and Harbor and Front Streets are limited to no more than 3 floor levels. Because of its location at the base of the bluff and directly adjacent to the Embarcadero, Front Street is further limited to an overall plate height of 32 feet. This exceeds the overall height limit of the visitor serving commercial district by two feet, but staff believes the unique and thoughtful architectural



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design warranted a slight exemption from strict application of the standard as allowed by the PD overlay.

The reduction in height and numbers of vertical floors reduces mass and scale of the proposed structure and brings in line with size and scale of existing development along the primary elevations. Along with ensuring compatibility with surrounding development, the special conditions will preserve public views to and along the bay and Morro Rock and help to ensure the development is subordinate to the character and form of the coastal bluff.

As conditioned to implement these recommended mitigations consistent with the Commission's understanding of them, the project as proposed is consistent with Land Use Plan policies 12.01, 12.02, and 12.06, as well as zoning standards 17.45.010, 7.45.040, and 17.48.190 of the City's certified LCP.

### C. Visual Resources

The certified LCP characterizes the City's visual resources as "unique" and of "spectacular visual quality," including views of the bay, sandspit, Morro Rock, and a picturesque collection of fishing and recreational boats. The site of the proposed development is on the western bluffs directly above the waterfront in the Embarcadero. The Embarcadero, as defined by LUP policy 2.03, is the area located between Beach Street on the north, Main Street on the east, Olive Street on the south, and the waterfront to the west. The LCP notes that the City should "conspicuously seek to take better advantage of its visual qualities while attempting to restore and repair damage done to those qualities. To achieve these goals, the City's certified LCP policies detail specific public viewshed protections, which state, in part:

#### Policy 12.01

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic and coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated on Figure 31, shall be subordinate to the character of its setting.*

#### Policy 12.02

*Permitted development shall be sited and designed to protect views to and along the coast and designated scenic areas and shall be visually compatible with the surrounding area. Specific design criteria shall be established for the following areas:*

- a. The Embarcadero (as defined in Policy 2.03)*
- b. Downtown Commercial area.*

*The criteria shall include the following specific requirements and shall be applied to proposed projects on a case by case basis during architectural review:*

- a. Building height/bulk relationship compatible with existing surrounding uses;*



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- b. Landscaping to restore and enhance visually degraded areas using native and drought resistant plant and tree species;*
- c. Preservation and enhancement of views of the ocean, bay, sandspit and Morro Rock;*
- d. Any other requirements applicable from Coastal Commission conceptual approval of the Urban Waterfront Restoration Plan.*

### Policy 12.06

*New development in areas designated on Figure 31 as having visual significance shall include as appropriate the following:*

- a. Height/bulk relationships compatible with the character of surrounding areas or compatible with neighborhoods or special communities which, because of their unique characteristics, are popular visit destination points for recreation uses.*
- b. Designation of land for parks and open space in new developments which because of their location are popular visitor destination points for recreation uses.*
- c. View easements or corridors designed to protect views to and along the ocean and scenic and coastal areas.*

### 17.48.190 General Regulations: Protection of visual resources and compatible design.

*New development shall project and, where feasible, enhance the visual quality of the surrounding area. New development may be permitted only if the siting and design meet the following standards:*

- A. Protection of public views: significant public views to and along the coast are protected.*
- B. Natural landform protection: alterations to natural landforms are minimized.*
- C. Compatibility: the development is visually compatible with the character of the surrounding area and any design themes adopted for the area by the city.*
- D. Visual quality: restores and enhances visual quality in visually degraded areas.*
- E. Scenic area standards: in highly scenic areas, as depicted in the Morro Bay coastal land use plan/coastal element, the following additional standards shall also apply:*
  - 1. Character: the proposed development shall be subordinate in character to its surroundings.*
  - 2. Height/bulk: the height/bulk relationships in the development shall be compatible with the surrounding area.*
  - 3. Parks and open space: parks or open space shall be designated and incorporated into new developments.*
  - 4. View corridors: view corridors shall be incorporated into the development to protect significant public views to and along the shoreline and other scenic areas.*
  - 5. Landscaping: landscaping shall be provided to restore and enhance visually degraded areas using native, if feasible, and drought-resistant plant and tree species.*



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*6. Preservation and enhancement: preservation and enhancement of views of the ocean, bay, sandspit and Morro Rock.*

The City's certified LCP policies and standards require that new development be designed to protect and preserve public views to and along the coast and be visually compatible with, and subordinate to, the character of the surrounding area. This includes maintaining / preserving height and bulk relationships with existing development, preservation and enhancement of views of the ocean and bay, sand spit and rock, landscaping to enhance and restore visually degraded areas, and designation of land for parks and open space in new developments.

The project approved by the City is located on the bluffs overlooking the waterfront in an area defined as visually significant in the certified LCP. The project site is located at the south end of a natural bluff in the heart of the Embarcadero, the most visited part of the City. Development in the area adjacent to the project site, generally follows the contour of the land and steps down the bluff. Looking towards the coast from the Market Street frontage, existing development is single story in height preserving views to and along the Bay and Morro Rock. Looking up from the Embarcadero and Front Street, the bluff face is undeveloped north of Harbor Street. Existing development is located on the top of the bluff and mainly small scale residential in nature. See Exhibit 5.

Because the site rises up to approximately 40 feet above sea level, there are views down Harbor Street towards Morro Rock, Morro Bay, and the sand spit. The City's LUP describes Morro Rock as "the landmark of the community" and "the most significant visual feature of the area." Morro Bay and the Embarcadero in particular is *the* major tourist attraction of the community and a prime coastal visitor-serving destination with an estimated 1.5 million visitors annually.

South of Harbor Street across from the project site, the bluff is more extensively developed with visitor-serving commercial structures that are larger than those to the north. Development such as Dorn's Restaurant and the Blue Sail Inn appear large from the Front Street elevation, but maintain a single story façade along the top of the bluff (Market Street elevation). By stepping down the bluff, development is accommodated without creating an overly massive and imposing façade that blocks public views or diminishes the small town character of the Embarcadero.

Along its primary elevations, the mixed-use building is 3 - 4 stories and 32' – 42' in height, exceeding the 30' height standard of the primary zoning. It is the largest development (size and mass) of its kind along the Embarcadero. The floor area ratio (i.e., ratio of floor area to lot size) ranges from 109% to 163%. Gross structural area (i.e., floor area, garages, balconies, decks) is more than 2.5 times the size of the building footprint. See Table 1 in section A above. In terms of permanent public viewshed impacts, the proposed mixed-use development will block coastal views to Morro Rock, the bay and the sand spit. Along the Market Street (east) elevation, the proposed structure is twice the height than the existing structure on site that will be demolished as part of this project. Because of this, motorists, pedestrians, and bicyclists will lose a portion of the important public view along Harbor Street. Harbor Street provides an important link from the downtown to the central Embarcadero and affords dramatic views of



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Morro Rock from atop the bluff. Please see Exhibit 5.

As currently proposed, the Harborview mixed-use building will be larger in size and mass than any of the existing development south of Harbor Street and much larger than any bluff development north of Harbor Street. Accordingly, the City-approved development is not subordinate to the character of its surrounding, does not maintain the bulk/height relationships established elsewhere in the Embarcadero, and is not visually compatible with the pattern of existing development gracing the bluffs. The proposed development represents a significant departure from the established character of the community and embodies little of the coastal fishing town atmosphere that characterizes the City's Embarcadero.

The City approval of such a large structure at this location concluded that even if the building height were restricted to 14', views to Morro Rock and along the coast would be similarly blocked. However, that is not the case. Fourteen feet is the approximate height of the existing structure located on site. Photo simulations provided by the applicant demonstrate that significantly more of Morro Rock will be blocked from view by the proposed 35-foot Market Street façade than is currently blocked by the existing structure.

The certified LCP requires permitted development to be sited and designed to protect and enhance views to and along the coast and designated scenic areas. The policies regarding visual compatibility are designed to avoid excessively large structures that would have significant adverse impacts on the public views. In this instance, rather than designing to minimize visual impacts, the applicant has chosen to design a project that because of its size and scale does not minimize impacts but instead will block views to and along the coast. In fact, the project meets or exceeds all maximum zoning standards. The Commission notes that maximum zoning standards (height, FAR, coverage, etc) are exactly that, maximums, and depending on the site characteristics and other factors (i.e., LUP policies), building to zoning maximums is not warranted.

During meetings with staff, the applicant has suggested that he would reduce the fourth floors on buildings A and B and further setback the upper floor elements along Harbor Street to lessen the visual impact of the project. The applicant maintains that the project meets all City guidelines for building height and maximum lot coverage except for a portion of Unit A and B that was granted an exemption from the height standard because of the project's public benefits under the PD overlay zone. The applicant further notes that the height, bulk, and size are consistent with the surrounding area, which is expanding, upgrading and evolving in response to marketplace demand and changing times.

Notwithstanding the applicant's proposed project modifications, additional measures are needed to ensure that the project is carried out consistent with the LCP visual resource protection policies and standards. Accordingly, the Commission is recommending special condition one limiting the building height to 14 feet above the historic average site grade of 38.5 feet. Limiting the building height to 14 feet will maintain a line-of-sight over the top of the proposed structure and thus, maintain views to Morro Bay and Morro Rock. Special condition one also restricts the building facades to ensure that the mixed-use structure, as viewed from the primary elevations, is visually compatible with surrounding development. Additionally, in order to avoid a large vertical façade, special condition one requires



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setbacks and articulations along the street frontages.

As conditioned to implement visual mitigations consistent with the Commission's understanding of them, the project can be found to be consistent with policies 12.01, 12.02, and 12.06, as well as zoning standard 17.48.190 of the City's certified LCP.

### D. Parking

The City's certified LCP policies provide standards for the provision of parking in all new development. Those policies state:

#### Policy 1.07A

*In reviewing all new development requests, provision shall be made for adequate off-street parking in order to serve the needs of the development. Once an approved parking management program for the City providing off-street parking resources has been developed and implemented as part of the LUP, new development shall be allowed to satisfy parking requirements through participation in such a program. If the program includes an in-lieu fee system, the new development shall provide an in-lieu fee of an amount equal to the purchase of land and construction of the number of spaces needed to serve the development's needs.*

#### Policy 2.08

*In reviewing visitor-serving development in the Embarcadero as defined in Policy 2.03, the City shall find that provision of off-street parking is sufficient to serve the development's peak demands as defined in Phase III of the Local Coastal Program. Parking demands shall be satisfied by the provision of off-street facilities on the development site or within 300 feet. Once a parking management program for the Embarcadero has been developed which provides off-street parking resources, and such a program is implemented, applications for development shall be allowed to satisfy their peak parking demands through participation in the program. If the program includes an in-lieu fee system, the applicant shall provide the City an in-lieu fee of an amount equal to the purchase of land and construction of the number of spaces needed to serve the development's peak needs. The City shall use the fees to provide for parking support in the Embarcadero.*

As noted in the Background section above, the approved project includes 6 two-car garages -one for each residential unit, one handicapped-accessible parking space, and two resident guest spaces for a total of 15 parking spaces. Though the applicant has adequately fulfilled the parking requirement for the residential (secondary) use, it falls short of providing adequate parking for the commercial (primary) uses. The first floor of the project is dedicated to commercial uses with a parking requirement of one space for every 300 square feet (17.44.020), the total parking demand for the commercial component of the project would be 17 spaces (5,135 s.f. / 300 s.f. = 17 spaces). The approved project does not include any parking for the required commercial spaces and was not conditioned to include a fee in-lieu of the required parking.



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The City's certified LCP includes policies and standards relating to the provision of off-street parking for all new development and calls for the creation and implementation of a parking management program that provides parking resources throughout the City. New development is allowed to satisfy parking requirements through participation in such a program and if the program includes an in-lieu fee system, the new development shall provide an in-lieu fee of an amount equal to the purchase of land and construction of the number of spaces needed to serve the development's needs. See policies 1.07A and 2.08. As proposed, the project falls short of providing adequate commercial parking spaces on site. Applicant responds by stating that the required commercial parking is provided through an in-lieu fee and that the City of Morro Bay has actively pursued additional parking. Though the city staff report discusses the use of an in-lieu fee to mitigate for the lack of parking, the approval did not include a condition requiring payment of the fee.

The City of Morro Bay does not have a parking management program and thus, a strict interpretation of the standard would require all new development to provide on-site parking, until and unless, the City developed and implemented a parking program. That being said, the City does actively collect parking in-lieu fees to help purchase available land and provide parking along the City's Embarcadero. In May 1997, the City designated use of parking in-lieu fees to make improvements at an existing 100-space parking lot on Front Street. After rehabilitation, the parking facility provided an additional 26 public parking spaces. In 2001, the City purchased a property that provides 40 parking spaces on the blufftop above the Embarcadero at a cost of \$501,330 for an average cost of \$12,500 per parking space. The City has also acquired property that is currently being used for parking but that was not paid with by funds from the parking in-lieu fee program. Parking in-lieu fee funds weren't use because the long-term use of the property is still in question. The property is located on the Embarcadero and is appraised at \$2.7 million, and it provides 60 short-term parking spaces at an average cost of \$45,000 per space. Based on the data provided by the City, since 1995 the parking in-lieu fee program has funded a total of 66 new parking spaces. Another 60 spaces have been provided with other funds. Over the same time period, the total number of parking spaces required as a condition of development and mitigated by in-lieu fee is 159.

With respect to the approved project, the City's findings identify a parking in-lieu fee as the most appropriate vehicle for mitigating the public parking requirement associated with the new development and estimates an in-lieu fee equal to \$4,000 per required parking space. Staff notes that the proposed in-lieu fee is 3 to 10 times less than the demonstrated cost of acquiring a parking space near the Embarcadero lending credence to the contention that the parking in-lieu fee is inadequate to fund acquisition of available lands and provide parking. Since 1995, the City has been able to provide only 66 of the required 159 parking spaces through its in-lieu fee program, although an additional 60 have been provided by using public funds. As the property values along the Embarcadero continue to increase and the availability of suitable properties to establish parking sites becomes more limited, it will be more difficult and expensive to acquire property solely for the purpose of providing parking.

As proposed, the project is inconsistent with the above referenced LCP policies. The Commission is recommending special condition 2 requiring the applicant to either provide adequate on-site parking for the entire development or to provide evidence that an in-lieu fee of an amount equal to purchase land



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and construct the required parking at today's costs has been paid to the City of Morro Bay. Only as so conditioned can the project be found consistent with LCP policies 1.07A and 2.08.

## E. Bluff Development

### Policy 1.25

*New developments on bluff tops shall not exceed a height of 14 feet above the existing bluff top. In addition, new developments shall be designed in such a manner as to avoid alteration of bluff faces, and where feasible given physical constraints, shall be designed to step down bluff faces.*

#### 17.12.66 Bluff top edge.

*"Bluff top edge" means the upper termination of a bluff. When the top edge of the bluff is rounded away from the face of the bluff as a result of erosional processes, the edge shall be defined as that point beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the bluff. In a case where there is a step like feature at the top of the bluff face, the landward edge of the topmost riser shall constitute the bluff top edge.*

#### 17.12.172 Coastal bluff area.

*"Coastal bluff area" means that area commencing either between:*

- 1. The landward edge of the rocky or sandy portion of the beach or bay; or*
- 2. Immediately landward of the Embarcadero or Front Street, to the nearest street right-of-way. A coastal bluff consists of rock, sediment or soil resulting from erosion, faulting, folding or excavation of the land mass and having vertical relief of ten feet or more as measured from the toe of the bluff to the bluff edge.*

#### 17.12.310 Height of building.

- A. "Height of building" means the vertical distance from the average level of the highest and lowest portion of the lot covered by the building, as measured to the topmost point of the roof but not including ventilation stacks and chimneys under six feet in width or length.*
- B. When measuring the various levels on a lot to calculate the height, the grades in existence on the lot on January 1, 1986, shall be used; any fill added to the site since that date shall be deducted from present grade elevations and any areas cut since that date may be added to the present grade elevations when calculating the height limit.*

#### 17.45.010 Bluff Development Standards: Purpose

*Regulations and performance standards are herein specified to regulate development on coastal bluffs for the following purposes:*

- A. Protect Public Views. To protect public views to and along the ocean and scenic coastal*



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*areas, maintain the character of the bluff setting, not impair but facilitate public access, address environmental concerns as provided in the general and local coastal plans.*

*B. Protect the Coastal Bluffs. To protect the coastal bluffs in the city from future development which may damage such bluffs, and in an effort to minimize the hazards to life and property.*

*C. Adverse Visual Impacts. To mitigate the potential for adverse visual impacts that can be created by blufftop development and to preserve existing public coastal views for the future enjoyment of the city's residents and visitors.*

*D. Geographic Features. To maintain the unique geographic features of the bluffs and ensure development is subordinate to the character and form of the coastal bluff areas.*

### 17.45.040 Bluff Development Standards.

*In addition to the primary base zoning district, and suffix zones, combining districts, specific plan requirements, the following standards shall apply within the bluff buffer area for development on coastal bluff properties:*

*B. New Development Located Within Fifty Feet Of The Bluff Edge. New development located within fifty feet of the bluff edge shall not exceed a height limit of fourteen feet; provided, however, that for peaked roofs (4 in 12 or greater pitch) and other architectural features, a height of up to seventeen feet may be permitted.*

*C. Permitted Development. Permitted development shall be sited and designed to protect public views to and along the ocean and scenic coastal areas, and shall be subordinate to the character of the setting. Development shall not impair but facilitate public access, environmental concerns, and public views as provided in the general and local coastal plans. Development shall be coordinated with existing or planned future public facilities.*

### Analysis

As noted in the findings above, the City relied upon the planned development (PD) designation to grant an exemption to the overall height and setbacks. The exemption in combination with other actions taken by the City, allowed it to approve a three and four-story building as consistent with a 14-foot height limit.

As defined in section 17.12.310, the height of the building is measured as the vertical distance from the average grade of the lot in existence on January 1, 1986 to the topmost point of the roof. In 1986, a large retaining wall was located along the southwestern property line elevating the topographic condition to approximately 38 feet above mean sea level. The wall collapsed during a rainstorm in March 1995 and the fill material behind it subsequently washed away. Since that time, the bluff has equilibrated to its current topographic condition, which in some areas is more than twenty feet below the height of the grade when the retaining wall existed. Relying solely on this standard as the City did, creates an unintended and very special benefit to the applicant, and one that is inconsistent with all the other policy direction of the LCP.

Applicant responds that the bluff had been fully developed in the past and the bluff features have been



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damaged beyond recognition by that past development. The zoning ordinance allows for new development within 50 feet of the bluff edge to have a 14-foot flat roof or 17-foot high, pitched roof. The project site does not have recognizable natural landforms and the proposed architecture will serve to restore the lines of the bluff. The project does not exceed the height limitation except for a small portion of the overall project that extends into the bluff top area by 10 feet.

The purpose of the City's bluff development standards as stated in Section 17.45 of the zoning ordinance are to protect public views and maintain the character of the bluff setting. New development must mitigate potential adverse visual impacts, maintain the unique geographical features of the bluffs, and ensure development is subordinate to the character of the bluff area. Section 17.45.040B states that new development within 50 feet of the bluff edge shall not exceed a height limit of fourteen feet, providing however, that for peaked roofs and other architectural features, a height of up to seventeen feet may be permitted. Where the City's approval ran into trouble was in its determination of the bluff edge. The City's approval assumed that the bluff edge was coterminous with the retaining wall that was in place in 1995 prior to collapse. The certified LCP standard, however, specifically establishes the bluff top edge based on existing on the ground conditions (§ 17.12.66). The City's findings stated that after the collapse of the retaining wall, the bluff feature was destroyed beyond recognition and that for lack of any identifiable geographic feature, the prior location of the wall would serve as the bluff edge.

Staff disagrees with the City's findings for a couple of reasons. First, it is clear from aerial photos that the bluff feature is intact at this location. Further, the City could have simply looked to the LCP for a definition of the bluff to aid in its determination. Section 17.12.172 states that a Coastal Bluff Area is the area immediately landward of the Embarcadero or Front Street to the nearest street right-of-way and having a vertical relief of ten feet or more as measured from the toe of the bluff to the bluff edge. The western edge of the proposed development site is located along Front Street and has a vertical relief of approximate twenty feet from its toe to the bluff edge. Secondly, section 17.12.66 provides the criteria for establishing the blufftop edge but was not referenced in the City's staff report. And lastly, staff compared the existing topographical conditions with old State Tidelands Maps and USGS photo-rectified topographical maps and found that the existing bluff edge position follows the same or similar alignment as the historical (pre-development) bluff edge. By making a finding that the bluff had been destroyed and then assuming the bluff edge was coterminous with the prior retaining wall excluded a large portion of the development site from the bluff top development standards of the LCP.

As a result, the City-approved project is inconsistent with the certified LCP because it is based on the maximum allowable height of the underlying visitor serving commercial zone rather than the maximum height allowed by the bluff top development standards, and an improperly defined the bluff edge (i.e., the location of the now non-existent retaining wall) rather than a delineation based on existing topographic conditions. As such, the approval results in a structure that exceeds the blufftop development standards and is inconsistent with the blufftop development, visual resource, and general development standards of the certified LCP. The approved project is larger in size, scale, and height than all other existing development along the bluffs in the Embarcadero. It is more massive than all other structures and will block public views of Morro Rock and the Bay from both Harbor and Market streets.



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As noted in the Community Character section above, the approved development is out of character with the bluff setting north of Harbor Street. Development in this location is confined to the blufftop and typically one and two-story in height. Buildings are set back from the bluff edge to minimize hazards and preserve the natural geologic features of the bluff face. By contrast, the City approved structure will essentially replace the bluff by covering the entire lot including the area of the bluff face and become the dominant feature of the site. South of Harbor Street, development occurs on the bluff face, but it is generally limited to two stories in height and 30 feet overall from existing grade. Based on the City's interpretation of the average grade and bluff edge location, the approved development rises more than 40 feet from existing grade along Front and Harbor Streets. The City's approval did not adequately evaluate the project's impacts on the character of the bluffs or the coastal fishing village roots that attracts many visitors to the Embarcadero. And though while the City approval establishing the average grade of the site may be consistent with an outmoded zoning standard, the approval is inconsistent with many other LCP standards including those established to define the bluff top edge and limit the height of blufftop development (§ 17.12.66 and 17.45.040B).

Accordingly, staff is recommending special condition one that limits new development on bluff tops to a height of 14 feet from the historical average grade of 38.5 feet. By restricting the height of the proposed building, the potential for any adverse impacts on public views will be minimized and the development will be brought into line with the character of unique geographic features of the bluffs.

As conditioned to implement bluff development mitigations consistent with the Commission's understanding of them, the project can be found to be consistent with policy 1.25, as well as zoning standards 17.12.66, 17.12.172, 17.45.010, and 17.45.040 of the City's certified LCP.

### F. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.



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